

REMARKS

The Examiner has revised the current rejection in light of new prior art and has reformulated the rejection. As set forth below, such new rejection is still deficient. However, despite such deficiencies and in the spirit of expediting the prosecution of the present application, applicant has incorporated the subject matter of a dependent claim into each of the independent claims. Since the subject matter of such dependent claim was already considered by the Examiner, it is asserted that such claim amendments would not require a new search and/or consideration.

The Examiner has rejected Claims 1-2, 4-5, 7-10, 12-13, 15-18, 20-21, 23-27 and 31 under 35 U.S.C. 103(a) as being unpatentable over Caronni et al. (U.S. Patent Publication 2002/0143850) in view of Cochran (“Inside the Exchange Server Antivirus API” September 7, 2001). Applicant respectfully disagrees with such rejection, especially in view of the amendments made to each of the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of former dependent Claim 25.

With respect to the subject matter of former Claim 25 (at least substantially incorporated into each of the independent claims), the Examiner has relied on Paragraph [0003] from the Caronni reference to make a prior art showing of applicant’s claimed technique “wherein an order of said computer files identified within said pending scan database being scanned is based on an algorithm that estimates the likelihood of a read request being performed on each computer file” (see the same or similar, but not necessarily identical language in each of the independent claims).

Applicant respectfully asserts that the excerpt from Caronni relied upon by the Examiner merely discloses “[a] network...[where] information travels between individual networks in discrete ‘packets’ with an addressing scheme to identify the packet’s destination and where it originated,” and that “[p]ackets from many sources are collected, transmitted, and routed to the appropriate addresses” (Paragraph [0003]). However,

merely disclosing a network where information travels in discrete packets with an addressing scheme to identify the packet's destination and where it originated in addition to collecting, transmitting, and routing those packets to the appropriate addresses, as in Caronni, does not even suggest "an order of said computer files identified within said pending scan database," much less a technique "wherein an order of said computer files identified within said pending scan database being scanned is based on an algorithm that estimates the likelihood of a read request being performed on each computer file" (emphasis added), as claimed by applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 7 et al., the Examiner has relied on the following excerpt from the Cochran reference to make a prior art showing of applicant's claimed "initiation code operable upon startup to detect any computer files stored on a storage device not included within either said pending scan database or said scanned file database and to add such computer files to said pending scan database."

"The first improvement in AVAPI 2.0 is scanning. Although AVAPI 1.0 supported on-demand and background scanning of attachments, AVAPI 2.0 scans both message body and attachments, adds support for proactive and priority-based scanning, and improves on-demand and background scanning. With proactive scanning, the system submits messages to the IS by putting them in a common queue. You can prioritize items in this queue based on need (by default, all are low priority). When a client requests an item, AVAPI upgrades the item to high priority. The antivirus software proactively scans all items in the queue as priorities permit (AVAPI 1.0 treated all items as on-demand high-priority items). This approach maximizes detection rates with minimal effect on the client. AVAPI 2.0 performs multithreaded processing of the queue and supports native MIME and MAPI content (without the need for content conversion), which lets antivirus scanning and detection operations have minimal effect on system resources."

(Paragraph [0003])

Applicant respectfully asserts that the excerpt from Cochran relied upon by the Examiner simply teaches that "the system submits messages to the IS by putting them in a common queue," that "[w]hen a client requests an item, AVAPI upgrades the priority," and that "[t]he antivirus software proactively scans all items in the queue as priorities permit." However, merely putting messages in a common queue, giving a higher priority to an item requested by a client, and scanning all items in the queue as priorities permit, as in Cochran, fails to even suggest "initiation code operable upon startup to detect any computer files stored on a storage device not included within either said pending scan database or said scanned file database and to add such computer files to said pending scan database" (emphasis added), as claimed by applicant. Clearly, only generally teaching putting messages in a common queue and scanning them, as in Cochran, simply fails to specifically meet "initiation code operable upon startup to detect any computer files stored on a storage device not included within either said pending scan database" (emphasis added), in the manner as claimed by applicant.

Furthermore, with respect to Claim 26, the Examiner has relied on Paragraph [0003] from the Cochran reference (reproduced above) to make a prior art showing of applicant's claimed technique "wherein only computer files determined to be clean from the malware scanning are stored in the scanned file database."

Applicant respectfully asserts that the excerpt from Cochran relied upon by the Examiner merely discloses that “the system submits messages to the IS by putting them in a common queue” and that “the antivirus software proactively scans all items in the queue as priorities permit.” However, merely teaching that messages are put in a common queue to be scanned, as in Cochran, simply fails to even suggest a scanned file database, much less a technique “wherein only computer files determined to be clean from the malware scanning are stored in the scanned file database” (emphasis added), as claimed by applicant.

Again, since the at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAIIP486).

Respectfully submitted,  
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